No. 80-1306

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DIANE DOE, etc.,

Petitioner

vs.

OMER RENFROW, etc., et al,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF THE INDIANA SCHOOL BOARDS ASSOCIATION AS AMICUS CURIAE

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QUESTIONS PRESENTED

In response to an alarming increase in student drug abuse at school, school officials conducted a narcotics inspection in all junior and senior high school classrooms during an extended first period class with the assistance of trained drug sniffing dogs, their handlers, and law enforcement officers. Prior to the drug inspection school and law enforcement officials had agreed that the inspection was for school drug use deterrence only, and that no arrests or criminal prosecutions would result from any drugs found during the inspection. The questions presented for review are:

1. Whether the use by school officials of trained drug sniffing dogs under such circumstances constitutes a search under the Fourth Amendment?

2. If such use of trained drug sniffing dogs constitutes a search, is such a search reasonable under the Fourth Amendment?

3. Whether a pocket search of a student to whom a dog's alert has indicated the presence of marijuana odor, is a reasonable search for school purposes under the Fourth Amendment?

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The Indiana School Boards Association (ISBA) respectfully submits this Brief as *amicus curiae* in support of the school Respondents.

CONSENT OF THE PARTIES

The Indiana School Boards Association files this Brief with the consent of counsel for all parties, whose letters of consent have been filed with the Clerk.

INTEREST OF AMICUS CURIAE

The Indiana School Boards Association is a voluntary statewide association representing the interests of the locally elected or appointed governing bodies of all Indiana public school corporations, including Respondent School Town of Highland. The membership of the ISBA is responsible for the education of all Indiana school children in the public schools. The purpose of the ISBA is to promote the effective administration and operation of the public schools in the state.

In discharging its responsibility the ISBA serves in an advisory capacity to its members concerning local control of education and other school matters, including an acute interest in maintaining the legal authority of local school officials to take necessary and effective measures to rid the public schools of illegal drugs.

The ISBA believes that the Fourth Amendment proscribes only unreasonable searches. In any determination of whether a school drug inspection procedure is proper under the Fourth Amendment, the compelling state interest in protecting our school children from serious harm to their health, safety and learning environment from drug abuse is paramount.

The present case is of particular importance because the Petitioner seeks to have this Court proscribe an effective and judicially approved procedure for carrying out this responsibility.

The ISBA participated as *amicus curiae* in this case in the Court of Appeals and District Court below.

STATEMENT OF THE CASE

ISBA adopts the statement of the case set forth in the Brief in Opposition filed on behalf of Respondents Omer Renfrow, George Kurteff, Harvey Keim, John Guiden, Lorraine King, Lawrence Vasser, Burton Masepohl, John Terpstra, and Al Prendergast, as a member of the Board of School Trustees of the School Town of Highland.

SUMMARY OF ARGUMENT

The law is well settled that the Fourth Amendment does not require the full application of the Fourth Amendment as it applies in the criminal law to school drug inspections by school officials for school purposes. The decisions of the District Court and Court of Appeals below were, therefore, correct in holding that the use of dogs by school officials, with the assistance of law enforcement officials, to detect marijuana, and the subsequent pocket searches of students upon the continued alert of the dogs to those students, for the sole and exclusive purpose of furthering the educational goal of eliminating drug use within the school, does not violate the Fourth Amendment's prohibition against unreasonable searches.

School officials have the responsibility and right under the *in loco parentis* doctrine and Indiana's Student Due Process Code to take effective action to deter drug use by students during school. The alarming increase of student drug use at school justified the investigative procedure used by school officials. The extreme dangers that drugs pose to the health, safety and effective education of our school children justify strong measures by school officials to deter drug use.

No conflict presently exists among the Courts of Appeals regarding the use by school officials of drug detecting dogs in the public schools. A Texas District Court decision[1] reaching a contrary result ignored the uniform authority of the federal circuits that the use of trained dogs to sniff for drugs is not a search within the meaning of the Fourth Amendment.

The decision in this case is consistent with *Zamora* v. *Pomeroy*, ____ F. 2d ____, No. 79-1611 (10th Cir. January 21, 1981), the only other Federal Court of Appeals decision that has addressed the issue of whether school officials may use

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[1] *Jones* v. *Latexo Independent School District*, 499 F. Supp. 223 (E.D. Texas 1980)

trained drug sniffing dogs in a general school drug inspection. In *Zamora,* the Tenth Circuit approved a search of a student's locker based solely on the dog's alert. The dog had alerted to the student's locker during a general school drug inspection in which dogs were permitted to sniff all school lockers for drugs.

A trained drug sniffing dog's continued alert as to a particular student gives school officials, and others acting under their direction, "a reasonable cause to believe" that the student to whom the dog has alerted has drugs in his possession. A warrantless pocket search by school officials, or others acting at their direction, based upon "a reasonable cause to believe" a student is in possession of an illegal and potentially dangerous substance, is a reasonable search under the Fourth Amendment.

ARGUMENT

I

THE LAW IS WELL SETTLED THAT THE FOURTH AMENDMENT DOES NOT REQUIRE THE FULL APPLICATION OF THE FOURTH AMENDMENT AS IT APPLIES IN THE CRIMINAL LAW TO SEARCHES BY SCHOOL OFFICIALS FOR EDUCATIONAL PURPOSES.

The majority of student search and seizure cases recognized that the Fourth Amendment is applicable to the schools. However, warrantless searches and seizures conducted by educational personnel have not been viewed as unreasonable *per se,* nor has probable cause been found to be the relevant standard in determining the justification for the search.[2]

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[2] Gardner, *Sniffing for Drugs in the Classroom—Perspectives on the Fourth Amendment,* 74 N.W. L. Rev. 803 (1980).

The decisions of the Court of Appeals and the District Court below are consistent with this authority. The District Court recognized that "a certain balancing occurs between an individual student's rights and the school administrator's need to protect all students and the educational process." To discharge this duty "a reasonable right to inspection is necessary" said the Court. *Doe* v. *Renfrow,* 475 F. Supp. 1012, 1022.

The most instructive tandem of cases recognizing the different standards that apply to searches by law enforcement officials for evidence of a crime and searches by school officials to further the essential educational goal of preserving a safe and effective learning environment are *Piazzola* v. *Watkins,* 316 F. Supp. 624 (M.D. Ala. 1970), *aff'd,* 442 F. 2d 284 (5th Cir. 1971) and *Moore* v. *Student Affairs Committee of Troy State University,* 284 F. Supp. 725 (M.D. Ala. 1968).

Both cases arose out of a joint search of a college dormitory by police and college officials which uncovered marijuana at Troy State University. In *Piazzola,* federal habaes corpus relief was granted to petitioners who had been convicted on evidence obtained in the warrantless police and school official dormitory search. In *Moore,* the Federal Court that granted habaes corpus relief in *Piazzola,* denied the same students reinstatement to college. The Court rejected the students' argument that the evidence obtained in the illegal police search could not be used in a college expulsion hearing.

This result was reached even though the police initiated the search for criminal prosecution purposes with the consent of the school officials. Such a result is even more compelling in public elementary and secondary schools where school officials stand *in loco parentis* to their students and a search is initiated by such officials for school purposes.

The criminal law overlay, which Petitioner seeks to superimpose, is particularly inappropriate within the context of schools. The New York Court of Appeals has stated:

> *A school is a special kind of place in which serious and dangerous wrongdoing is intolerable.* Youngsters in a school, for their own sake, as well as that of their age peers in the school, may not be treated with the same circumspection required outside the school or to which self-sufficient adults are entitled. *The fact of an epidemic danger in the school may not be ignored in theory or in reality.* The dangerous drug prevalence in many schools and in many areas is a significant fact to be considered in determining the scope and reasonableness in making searches (cf. Education Law, Sec. 912-a, 3028-a*).

People v. *D.*, 34 N.Y. 2d 483, 486-487, 358 N.Y.S. 2d 403, 315 N.E. 2d 466 (1974) (emphasis added).

Thus, to determine the reasonableness of the searches here, the Court must balance "the need to search against the invasion which the search entails." *Camara* v. *Municipal Court*, 387 U.S. 523, 632-37 (1967). "To meet the test of reasonableness, an administrative screening search must be as limited in its intrusiveness as is consistent with satisfaction of the administrative need that justifies it." *United States* v. *Davis*, 482 F. 2d 893, 910 (2d Cir. 1973). Under these standards, the drug inspections in the Highland classrooms were reasonable.

II

THE DECISIONS OF THE COURTS BELOW GIVE PROPER DEFERENCE TO TRADITIONAL SCHOOL OFFICIAL AUTHORITY TO PROTECT STUDENTS BY DETERRING DRUG USE AT SCHOOL.

School officials entrusted with the care and education of our school children must necessarily have broad powers to enforce discipline and to take actions necessary to provide a safe and effective learning environment. The genesis of these powers is in the doctrine of *in loco parentis* under which it was considered that "a parent may . . . delegate part of his parental authority, during his life, who is then *in loco parentis*, and has a

portion of the power of the parent committed to his charge, viz: that of restraint and correction, as may be necessary to answer the purpose for which he is employed." 1 W. Blackstone, *Commentaries on the Laws of England* 453.

The responsibility and authority of school officials to take strong, effective action to rid the schools of illegal drugs has been judicially recognized even in circumstances where drug possession occurred outside school and off school property.[3]

The exercise of authority to rid the schools of drug possession during school hours is even more imperative.

As stated by a United States Senate Subcommittee:

> The detrimental effects of drug abuse on an individual's capacity to learn and function in an academic environment is obvious. *There is just no way to teach a student who is sedated, high, drunk or a combination of all three.* Beyond the individual tragedies involved, however, there are disturbing indications of some parallels between substance abuse and incidents of violence and vandalism in schools.

Challenge for the Third Century: Educations in a Safe Environment—Final Report on the Nature and Prevention of School Violence and Vandalism, Report of the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary (95th Cong. 1st Sess.) at 29 (emphasis added).

The Indiana public schools have not been immune to this tragic epidemic of drug abuse by increasingly younger and younger school children. The seriousness of the drug problem is underscored by the results of a study of drug use of adolescents in Indiana commissioned by the Indiana Department of Mental Health.[4]

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[3] *Caldwell* v. *Cannady,* 340 F. Supp. 835 (N.D. Tex. 1972).

[4] Hahn, *The 1980 Indiana School Drug Study, Executive Summary: 1977-80 Changes in Student Drug Use Patterns.*

Of the over 11,000 Indiana 7th, 9th, 10th and 12th graders participating in the survey, 19% of the 7th graders, 45% of the 9th graders, 54% of the 10th graders, and 63% of the 12th graders had tried marijuana. These figures represent an increase from the 1977 study of 3% for 7th graders, 7% for 9th graders, and 8% for 12th graders. Tragically, student use of other dangerous drugs is on the increase as evidenced by Table II from that study (See Addendum). Thirty percent of the seniors have used amphetamines, 9% have used PCP, and 8% heroin!

The increase in the availability of drugs to school children has been even more dramatic and frightening. Of the students surveyed in 1980, 45% of the 7th graders, 75% of the 9th graders, 82% of the 10th graders, and 88% of the 12th graders indicated that they have had the opportunity to use marijuana.

The ready availability of marijuana, LSD, PCP, Heroin, and other dangerous drugs as shown on Table I in Addendum justifies the use of trained drug sniffing dogs to deter the spread of this tragic social disease.

The level of school drug use in the School Town of Highland Junior and Senior High Schools justified the use of trained drug sniffing dogs and the drug inspection procedures employed by the respondents. Students had testified that every day there were some students in every class who were under the influence of drugs. (Tr. 348, 356). Testimony further showed the disastrous effects of drug usage: disruption, interference with teaching, lowering of morale, and physical danger to the students and the teachers. (Tr. 137-38, 206-207, 347-348). Peer pressure, plus ready availability of drugs enticed nonusers to experiment with drugs (Tr. 80, 137, 357); children were being introduced to drugs as early as the seventh grade. (Tr. 352, 357).

Few methods exist by which school officials can detect and deter drug use. Nonuser students fear reprisals for informing,

and there exists extreme peer pressure against "ratting" on their fellow students. School officials would be negligent in their duties if they delayed efforts to inspect for drugs until such time as street smart student users or pushers slip up and are caught under the influence or making a sale or even a gift of their drugs.

The District Court properly took this pre-inspection environment into account in upholding the general school drug inspection.

> Turning to this case, the evidence shows the school administrators had compiled an extensive list of previous incidents of drug use within the school. In twenty school days before the investigation, thirteen incidents were reported where students were found either to be in possession of drugs or drug paraphernalia or under the influence of drugs or alcohol. The atmosphere within the Highland Junior and Senior High Schools was one of frustration on the part of school administrators and faculty brought about by their inability to control or arrest the drug use problem. Additionally, there was evidence from some students of refusal to speak out against those students using drugs for fear of reprisals. The use of the canine units was decided upon only after the upsurge in drug use at the schools. The school officials had outside independent evidence indicating drug abuse within the school. Use of the dogs to detect where those drugs were located was not unreasonable under the circumstances. Nor does the fact that the officials had no information about specific students and drug possession invalidate the use of the dogs. This Court now finds that in a public school setting, school officials clothed with the responsibilities of caring for the health and welfare of the entire student population, may rely on such general information to justify the use of the canines to detect narcotics.

Doe v. *Renfrow*, 475 F. Supp. 1012 at 1021.

Indiana school officials were also authorized by statute to rid the schools of the destructive influence of drugs. To carry

out this duty and responsibility, the Indiana Student Due Process Code directs school officials to expel students for drug possession or usage. Indiana Code, 20-8.1-5-4(h).

Further, to rid schools of this destructive influence, school officials may "take any action which is reasonably necessary to carry out, or to prevent an interference with carrying out, any educational function." Indiana Code, 20-8.1-5-2.

Nor does the presence of the uniformed law enforcement officers assisting the school officials transform the actions of the school officials into an unlawful seizure in light of the fact that the drug inspection was solely for school purposes and the officers were present only to assist school officials, demonstrated by the prior agreement of school and law enforcement officials that no arrests or prosecutions would result as a result of any drugs found during the school inspection.[5]

III

REVIEW BY THIS COURT WOULD BE PREMATURE BECAUSE THERE IS NO CONFLICT AMONG THE COURTS OF APPEALS ON THE ISSUES RAISED.

The Seventh Circuit Court of Appeals decision affirmed the District Court's approval of the drug inspection procedures[6] employed in the Highland Junior and Senior High Schools. It is the only Court of Appeals level decision that has addressed the specific issue of whether school officials, with the assistance of law enforcement officials, may bring trained drug sniffing dogs

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[5] This agreement was fully honored as no students were arrested or prosecuted even though drugs or drug paraphernalia was found on 17 students during the school inspection.

[6] With the exception of an admittedly improper nude search of Petitioner which the District Court held unreasonable under the Fourth Amendment (a conclusion not appealed by Respondents, and not an issue before this Court), the Courts below fully approved the drug inspection procedures employed.

and their handlers into the school building, lead the dogs through classrooms to sniff for drugs, and conduct pocket searches of students to whom the dogs' alerts indicate the presence of marijuana, for the sole and exclusive purpose of furthering the educational goal of eliminating illegal harmful drugs from the schools.

A.

Canine Sniffing Not A Search

The contrary decision in *Jones* v. *Latexo Independent School District,* 498 F. Supp. 233 (E. D. Texas 1980) ignored the unanimous authority of the federal circuits[7] which have addressed the issue that the use of trained dogs to sniff for drugs is not a search within the meaning of the Fourth Amendment. This decision also failed to appreciate the traditional authority of school officials to detain students individually or *en masse.*

The Court of Appeals for the Second Circuit in *United States* v. *Bronstein,* 521 F. 2d 459 (2d Cir. 1975), forcefully and properly answered the question of whether the use of trained drug sniffing dogs to detect the odor of marijuana on quasi-public property constituted a search.

> The appellants' first contention is that the law enforcement officers' action which we have described constituted a warrantless search and seizure without probable cause in

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[7] Including the Fifth Circuit in *United States* v. *Goldstein,* 635 F. 2d 356 (5th Cir. 1981); the District of Columbia: *United States* v. *Fulero,* 498 F. 2d 748 (D. C. 1974); the First Circuit: *United States* v. *Race,* 529 F. 2d 12 (1st Cir. 1976); the Second Circuit: *United States* v. *Bronstein,* 521 F. 2d 459 (2d Cir. 1975), *cert. denied,* 424 U. S. 918, 96 S. Ct. 1121, 47 L. Ed. 324 (1976); the Fourth Circuit: *United States* v. *Sullivan,* 625 F. 2d 9 (4th Cir. 1980); the Seventh Circuit: *United States* v. *Klein,* 626 F. 2d 22 (7th Cir. 1980) and *Doe* v. *Renfrow,* 631 F. 2d 91 (7th Cir. 1980); and Tenth Circuit: *United States* v. *Venema,* 563 F. 2d 1003 (10th Cir. 1977).

> the use of a trained German Shepard Dog. Appellants' argument here hinges upon the proposition that the sniffing, nipping and biting at the luggage of Meisha at the airport was a search within the protection of the Fourth Amendment.
>
> This contention apparently made for the first time in a district court in this circuit was described as 'nonsense' below and termed 'frivolous' by the District of Columbia Circuit in *United States* v. *Fulero*, 498 F. 2d 748 (1974).

Id. at 461.

The Tenth Circuit, in a similar case, was equally succinct in reaching the same conclusion:

> The defendant initially contends the use of Chase by the police to sniff the air outside his locker in the Poco Storage Company was in and of itself a search, and that such search was not based on probable cause. This line of argument is premised on the assumption that the actions of Chase in sniffing the air outside defendant's locker in the Poco Storage Company constituted a search. We do not agree with such premise.

United States v. *Venema*, 563 F. 2d 1003, 1005 (10th Cir. 1977).

B.

Extending Class Period Not a Seizure

By her failure to properly appreciate the traditional authority of school officials to control student movement during the school day, and a characterization of the brief entry and sniffing of the aisles by the dogs that is unsupported by the record read as a whole, the Petitioner would attempt to convert a brief and minimally intrusive entry by the inspection team to a mass arrest and unconstitutional search.

The District Court below correctly held that extending the first period class an extra one and half hours in order to allow

the drug inspection team with one dog to visit each classroom for about three to five minutes (Tr. 60-61) "in no way denies that person any constitutionally guaranteed right." *Doe* v. *Renfrow, supra* at 1019.

Indiana Courts have approved the use of detention of students for valid education purposes including discipline. The Supreme Court of Indiana in *Fertich* v. *Michner,* 111 Ind. 472, 11 N. E. 605 *aff'd on rehearing,* 14 N. E. 68 (1887), 68 Am Jur 2d § 259, held that the detention of a pupil is one of the recognized methods of enforcing discipline. In *Fertich,* the Indiana Supreme Court held that school officials were not liable for false imprisonment even though the plaintiff was detained by mistake for the misconduct of another student.

Further, the Indiana Student Due Process Code provides for broad authority in school officials to control student movement. Indiana Code, 20-8.1-5-3, provides that the general requirement that no rule or standard shall be effective with respect to any student, until a written copy is made available or delivered to the student or his parent, or is otherwise given general publicity within any school to which it applies, does not apply to rules or directions concerning the movement of students. The Petitioner would equate such restriction on student movement with an arrest.

Therefore, the holding of the Courts below in this regard are consistent with Indiana statutory and case law.

IV

THERE IS NO CONFLICT OF AUTHORITY AMONG THE COURTS OF APPEALS CONCERNING THE USE OF DRUG SNIFFING DOGS TO CONDUCT GENERAL DRUG INSPECTIONS IN THE PUBLIC SCHOOLS.

The decision in this case is consistent with *Zamora* v. *Pomeroy,* ____ F. 2d ____, No. 79-1611 (10th Cir. January 21, 1981). It is the only other Federal Court of Appeals decision

that has addressed the issue of whether school officials may use trained drug sniffing dogs in a general school drug inspection. In *Zamora*, the Court of Appeals for the Tenth Circuit approved a search of students' lockers based solely on a dog's alert. The dog alerted to two students' lockers during a general school drug inspection in which dogs were permitted to sniff all lockers in Roswell High School for drugs. The search was initiated at the request of the Assistant District Attorney and at the time of the search no specific persons were suspected of possessing marijuana at Roswell High. The search was conducted by Albuquerque, New Mexico police officers.

Where a drug inspection is instituted by school officials for school purposes, as in *Doe* v. *Renfrow*, the appropriateness of permitting school officials to use dogs as an aid in general school inspections is even more evident. This is especially true in light of the extensive evidence of recent previous drug incidents in the Highland School.

The District Court found the canine inspection procedures employed by Highland School officials to be unintrusive, and in light of both the purpose and circumstances existing, a reasonable exercise of school authority:

> The health and safety of all students at the two schools was threatened by an increase in drug use. The schools' administrators delegated by the state with the duty and responsibility to maintain order, discipline, safety and education within the school system supervised the investigation which was designed with the single purpose of eliminating drug use inside the school buildings. The operation was carried out in an unintrusive manner in each classroom.
>
> Moreover, the procedure of bringing the trained dogs into each classroom was planned so as to cause only a few minutes interruption. All students were treated similarly up until an alert by one of the dogs. No student was treated with any malice nor was the operation planned in a way so as to embarrass any particular student. Weighing

> the minimal intrusion against the school's need to rid itself of the drug problem, the actions of the school officials leading up to an alert by one of the dogs was reasonable and not a search for purposes of the Fourth Amendment. Up until the trained dogs indicated the presence of marijuana, no violation of any basic Fourth Amendment rights occurred.

Doe v. *Renfrow*, 475 F. Supp. 1012, 1022. The ISBA believes the Court's findings were amply supported by the record.

Moreover, where a legitimate governmental interest requires a general investigatory detention and inspection, the courts have found such procedures constitutionally preferable to random stops where governmental officials exercise arbitrary discretion.

The Supreme Court's recent search and seizure decision in *Delaware* v. *Prouse*, 440 U. S. 648, 99 S. Ct. 1391 (1979) involved random stops of vehicles to check for vehicle registration and safety inspection compliance. The Court recognized the important distinction between general investigatory detentions and random individual investigatory detentions.

> For Fourth Amendment purposes, we also see insufficient resemblance between sporadic stops of individual vehicles making their way through city traffic and those stops occasioned by roadblocks where all vehicles are brought to a halt or to a near halt, and all are subjected to a show of the police power of the community. At traffic checkpoints, the motorist can see that other vehicles are being stopped, he can see visible signs of the officer's authority, and he is much less likely to be frightened or annoyed by the intrusion.

Id., 99 S.Ct. at 1398.

Similar to the Court's suggestion for the use of roadblock or checkpoint stops, no student in this case was being singled out to be sniffed by the dog. All were subjected alike to the same identical minimal intrusion-being kept in class a little longer than normal with their classmates and teachers while

classes proceeded. Given the gravity of the drug problem in Highland, the "detention" and sniffing of the students by the dogs was a very minimal intrusion, and certainly a reasonable exercise of the school officials' authority.

V.

A TRAINED DRUG SNIFFING DOG'S ALERT ESTABLISHES REASONABLE CAUSE TO BELIEVE THAT DRUGS ARE PRESENT.

A trained drug sniffing dog's continued alert to a particular student gave Highland school officials, and others acting under their direction, "a reasonable cause to believe" that the student to whom the dog alerted had drugs in his possession.

While constitutional scholars may quibble about whether "probable cause" may be established solely on the basis of a trained drug sniffing dog's alert, interpreted by knowledgeable persons, there is no dispute among the circuits that a trained drug sniffing dog's alert establishes "a reasonable cause to believe" that the substances which the dog has been trained to indicate are present.

The continued alert of the dog to a student provided school officials with the requisite reasonable cause to believe that the student was concealing narcotics and justified a pocket search of him. *United States* v. *Race,* 529 F. 2d 12 (1st Cir. 1976). *United States* v. *Bowman,* 487 F. 2d 1229 (10th Cir. 1973).

At least one case, *United States* v. *Chadwick,* 532 F. 2d 773 (1st Cir. 1976) *rev'd on other grounds* 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977) held that a dog's alert alone may constitute probable cause. The Fifth Circuit has held that a dog's alert to luggage, plus the fact that defendants met certain aspects of the drug courier profile, constituted probable cause. *United States* v. *Goldstein,* 635 F. 2d 356 (5th Cir. 1981).

VI

SCHOOL OFFICIALS MAY CONDUCT A WARRANTLESS POCKET SEARCH OF A STUDENT BASED ON A REASONABLE CAUSE TO BELIEVE THE STUDENT IS IN POSSESSION OF ILLEGAL DRUGS.

A warrantless pocket search by school officials, or others acting at their discretion, based upon a reasonable cause to believe the student has drugs in his possession is a reasonable search under the Fourth Amendment.

The overwhelming weight of authority throughout the country has supported the rights of school officials to search individual students, if they have a reasonable suspicion that the student is in possession of narcotic drugs. *M.* v. *Board of Education,* 429 F. Supp. 288 (S.D. Ill. 1977); *In re W.,* 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973); *State* v. *Baccino,* 282 A. 2d 869 (Del. Super. 1971); *Nelson* v. *State,* 319 So. 2d 154 (Fla. App. 1975); *State* v. *Young,* 234 Ga. 488, 216 S. E. 2d 586 (1975); *People* v. *Jackson,* 65 Misc. 2d 909, 319 N.Y.S. 2d 731 (1971).

The decision of the Court below in this case is consistent with that authority.

> While a school student does not shed at the schoolhouse door rights guaranteed by either the Fourth Amendment or any other constitutional provision (*Tinker* v. *Des Moines School District, supra*), the student's Fourth Amendment and other constitutional rights are modified by that limited *in loco parentis* relationship which the school officials have with the students. That limited *in loco parentis* relationship modifies the student's Fourth Amendment guarantee of a sphere of privacy which the student can justifiedly expect state officials not to invade. While there is a core of privacy so vital to the student's personhood that it must be respected by a school official standing *in loco parentis,* that sphere of privacy protected by the Fourth Amendment can usually be invaded by a school official standing *in loco parentis* without a warrant, and (rather than upon probable cause) upon reasonable cause

> to believe that the student has violated or is violating school policy. *Moore* v. *Student Affairs Committee of Troy State University, supra;* M. v. *Board of Education Ball-Chatham Comm. Unit School Dist. No. 5,* supra.

Doe v. *Renfrow,* 475 F. Supp. at 1023.

The dog's continued alert to certain students gave the school officials a reasonable cause to believe that the students possessed marijuana. The pocket searches of certain students based on such alerts were therefore proper.[8]

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[8] The dogs alerted to about 50 students. Seventeen of those subjected to a limited pocket search based on the dog's alert were found to be in possession of controlled substances or drug paraphernalia. (Tr. 147).

CONCLUSION

Drug use among adolescent school children in the United States is reaching epidemic proportions. A large percentage of the students are first introduced to drugs by other students at school. School officials must have the necessary authority to take strong, effective measures to stop the tragic spread of student drug use.

Neither use of trained drug sniffing dogs in a general school drug inspection, nor subsequent pocket searches of students to whom the dogs' alerts gave school officials reasonable cause to believe drugs were in their possession violated the Fourth Amendment's prohibition against unreasonable searches and seizures when the decision to initiate such procedures was based on evidence of an alarming increase in drug use during school, and the sole purpose of the inspection was to further the educational goal of eliminating drugs from the schools, and not for criminal prosecution. The Writ of Certiorari should therefore be denied.

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ADDENDUM

Drug Use

Percentage of Students Who Have Tried Illegal Drugs At Least Once and Trends Since 1977

	7th Graders		9th Graders		10th Graders		12th Graders	
	% Trying in 1980	% Change Since 1977	% Trying in 1980	% Change Since 1977	% Trying in 1980	% Change Since 1977	% Trying in 1980	% Change Since 1977
Marijuana	19	+3%*	45	+7%*	54	—	63	+8%*
LSD	4	0	10	+3%*	12	—	15	+3%*
Hallucinogens	3	−1%	7	−2%	9	—	10	−7%*
Amphetamines	8	+3%*	21	+7%*	27	—	30	+8%*
Barbiturates	5	+1%	14	+4%*	16	—	16	+1%
Non-barbiturates	3	0	7	+3%*	8	—	13	+4%*
Heroin	7	+4%*	9	+5%*	9	—	8	+5%*
Other Opiates	3	0	7	+2%	9	—	12	0
Cocaine	5	+1%	7	+1%	9	—	13	+1%
Inhalants	13	+3%*	16	−2%	15	—	13	+1%
PCP	4	—	5	—	7	—	9	—

—Data not collected in 1977

* Note: A change of 3% or more is considered significant at the .05 level.

TABLE 1

Drug Availability

Percentage of Students Having an Opportunity to Try And Percentage of Increase Since 1977

	7th Graders		9th Graders		10th Graders		12th Graders	
	% Having Opportun. 1980	% Incr. Since 1977	% Having Opportun. 1980	% Incr. Since 1977	% Having Opportun. 1980	% Incr Since 1977	% Having Opportun. 1980	% Incr. Since 1977
Marijuana	45	+22%	75	+27%	82	—	88	+19%
LSD	17	+11%	30	+19%	37	—	41	+20%
Hallucinogens	12	+ 7%	20	+10%	27	—	31	+10%
Amphetamines	21	+14%	41	+22%	50	—	53	+24%
Barbiturates	16	+11%	31	+18%	37	—	38	+17%
Non-Barbiturates	10	+ 7%	19	+12%	26	—	35	+21%
Heroin	10	+ 6%	12	+ 5%	13	—	13	+ 7%
Other Opiates	10	+ 7%	18	+11%	22	—	25	+10%
Cocaine	16	+11%	24	+15%	29	—	33	+15%
Inhalants	40	+25%	51	+28%	52	—	54	+30%
PCP	11	—	16	—	20	—	25	—

—Data not collected in 1977